


UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FILED

NOV 29 2017

  
CLERK

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DANA BOSWELL,

Movant,

-vs-

UNITED STATES OF AMERICA,

Respondent.

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CIV. 16-4085  
CR 98-40101

ORDER

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On June 16, 2016, Dana Boswell filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. (Doc. 1.) Citing *Johnson v. United States*, 135 S.Ct. 2551 (2015), Boswell argued that the residual clause of USSG § 4B1.1(a)(2) is unconstitutionally vague, and that he should not have been sentenced as a career offender in 1999. Because it was his second § 2255 motion, Boswell also filed a motion in the Eighth Circuit for authorization to file a second or successive habeas petition. The Eighth Circuit's authorization is a prerequisite under 28 U.S.C. § 2244(b)(3) to the filing of a second or successive habeas petition. Boswell asked this Court to hold his petition in abeyance until such time the Eighth Circuit rules on his application to file the second motion. This Court granted the motion, stating that Boswell's § 2255 motion will be held in abeyance until the Eighth Circuit rules on his application to file a second or successive motion, and that the § 2255 motion will be dismissed for lack of jurisdiction if the Eighth Circuit denies authorization for its filing. *See, e.g., Boyd v. United States*, 304 F.3d 813 (8th Cir. 2002) ("district court should dismiss [second or successive habeas petition] for failure to obtain authorization from the Court of Appeals").

On November 14, 2017, the Eighth Circuit issued a judgment denying Boswell's petition for authorization to file a successive habeas application, and the Court's mandate was issued that same day. Accordingly,

IT IS ORDERED that the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (doc. 1) is dismissed.

Dated this 29<sup>th</sup> day of November, 2017.

BY THE COURT:

  
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Lawrence L. Piersol

United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY: 

(SEAL)

DEPUTY